

**REMARKS**

Claims 6, 7, 9, 11-13 and 15-19 are pending in the present application. Claims 6, 11 and 16 have been amended.

**Claim Rejections-35 U.S.C. 112**

Claims 6, 7, 9, 11-13 and 15-19 have been rejected under 35 U.S.C. 112, first paragraph, as allegedly failing to comply with the written description requirement. The Examiner has asserted that the protective layer of the claims "having substantially uniform thickness" was not described in the specification in such a way as to reasonably convey to one skilled in the art that the inventor, at the time the application was filed, had possession of the claimed invention. This rejection is respectfully traversed for the following reasons.

As emphasized in the Amendment dated September 12, 2006, since the protective layer of the present application is planarized, the protective layer should be understood as having substantially uniform thickness, although not exactly.

In the Advisory Action dated September 27, 2006, the Examiner has apparently asserted that the protective layer does not have uniform thickness because the surface of the field oxide is not flat. The Examiner has relied upon Japanese Patent Publication No. 2-257637 to support the assertion that the surface of the field oxide is not flat.

Applicant however respectfully submits that the thickness of polysilicon film 7 on the edge of field oxide 6 (bird's beak portion thereof) as shown in Fig. 1(e) of Japanese

Patent Publication No. 2-257637, appears to be different than the thickness of polysilicon film 7 on a center part of field oxide 6. In contrast, the protective layer of the claims is featured as "being formed so as not to be on edges of said field oxide and as having substantially uniform thickness". Since the protective layer of the claims is not formed on edges of the field oxide, and is therefore formed in a center part of the field oxide which naturally would be comparatively flat, the protective layer of the present application should thus be understood as of substantially uniform thickness. Applicant therefore respectfully submits that the specification provides written description so as to reasonably convey that Applicant had possession of the claimed invention, and that claims 6, 7, 9, 11-13 and 15-19 are thus in compliance with 35 U.S.C. 112, first paragraph. The Examiner is therefore respectfully requested to withdraw this rejection for at least these reasons.

#### **Claim Rejections-35 U.S.C. 102**

Claims 6, 7, 9, 11-13 and 15-19 have been rejected under 35 U.S.C. 102(b) as being anticipated by the Yoo et al. reference (U.S. Patent No. 5,605,853). This rejection, insofar as it may pertain to the presently pending claims, is respectfully traversed for the following reasons.

The semiconductor device of claim 6 includes in combination among other features a protective layer "formed directly on said field oxide to prevent overetching of said field oxide, said protective layer being a conductive layer, and being formed so as

not to be on edges of said field oxide and as having substantially uniform thickness”.

Applicant respectfully submits that the Yoo et al. reference as relied upon does not disclose these features.

The Examiner has interpreted floating gate 21 in Fig. 7 of the Yoo et al. reference as the protective layer of claim 6. Applicant however respectfully asserts that floating gate layer 21 in Fig. 7 of the Yoo et al. reference cannot be said to have substantially uniform thickness. In particular, floating gate layer 21 of the Yoo et al. reference is formed in a process step as described with respect to Fig. 2, simultaneously along with poly gates 16. As can be understood in view of Fig. 2, floating gate 21 is formed at a level above or vertically higher than poly gates 16. Since poly gates 16 and floating gate layer 21 of the Yoo et al. reference are formed on different levels, it should thus follow that a CMP method is not used in the Yoo et al. reference to flatten floating gate layer 21. This should be clear, because the Yoo et al. reference does not disclose or suggest flattening floating gate layer 21 so as to have substantially uniform thickness. Accordingly, Applicant respectfully submits that the semiconductor device of claim 6 distinguishes over the Yoo et al. reference as relied upon by the Examiner, and that this rejection, insofar as it may pertain to claims 6, 7 and 9, is improper for at least these reasons.

The semiconductor device of claim 11 includes in combination among other features a protective layer “formed directly on said field oxide to prevent overetching of said field oxide, said protective layer being a conductive layer, and being formed so as

not to be on edges of said field oxide and as having substantially uniform thickness”.

The semiconductor device of claim 16 includes in combination among other features a protective layer “formed directly on said field oxide to prevent overetching of said field oxide, said protective layer being a conductive layer, and being formed so as not to be on edges of said field oxide and as having substantially uniform thickness”. Applicant respectfully submits that the semiconductor devices of independent claims 11 and 16 respectively distinguish over the Yoo et al. reference for at least somewhat similar reasons as set forth above with respect to claim 6, and that this rejection, insofar as it may pertain to claims 11-13 and 15-19, is improper for at least these reasons.

### **Conclusion**

The Examiner is further respectfully requested to reconsider and withdraw the corresponding rejections, and to pass the claims of the present application to issue, for at least the above reasons.

In the event that there are any outstanding matters remaining in the present application, please contact Andrew J. Telesz, Jr. (Reg. No. 33,581) at (571) 283-0720 in the Washington, D.C. area, to discuss these matters.

Pursuant to the provisions of 37 C.F.R. 1.17 and 1.136(a), the Applicant hereby petitions for an extension of two (2) months to November 12, 2006, for the period in which to file a response to the outstanding Office Action. The required fee of \$450.00 should be charged to Deposit Account No. 50-0238.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment for any additional fees that may be required, or credit any overpayment, to Deposit Account No. 50-0238.

Respectfully submitted,

VOLENTINE FRANCOS & WHITT, P.L.L.C.

A handwritten signature in black ink, appearing to read "Andrew J. Telesz, Jr.", followed by a stylized flourish.

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